SUPREME COURT, U. S.

DEC 4 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 796

THE DREDGE CORPORATION, a Nevada Corporation,
Petitioner,

vs.

J. RUSSELL PENNY, etc.,
Respondent.

THE DREDGE CORPORATION, a Nevada Corporation,
Petitioner,

vs.

E. J. PALMER, etc.,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered June 26, 1968.

Opinions Below.

The Judgment of the United States Court of Appeals for the Ninth Circuit was made and entered June 26, 1968. Reported in .... F. 2d ..... A copy thereof is appended in this Petition in the Appendix at pages 5-13.

A Petition for Rehearing filed by the Dredge Corporation was denied on Sept. 30, 1968.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

A motion to stay judgment until Nov. 1, 1968 was granted for filing this Petition for writ of certiorari.

Statutes Federal Rules and Regulations Involved.

Articles I and II of the United States Constitution.

The pertinent portions of Articles V and XIV of Amendments to the Constitution of the United States.

The Mining Laws of the United States, as amended, (30 U.S.C. Sec. 21, *et seq.*).

The Administrative Procedure Act of the United States, 5 U.S.C., Ch. 19, Par. 1001 *et seq.* (Now Chap. 5, Secs. 500, *et seq.*).

The Common Varieties Act of July 23, 1955, 30 U.S.C. 611.

Questions Presented.

These are consolidated cases involving the validity of thirty six sand and gravel placer Mining Claims located on public land in Clark County, Nevada. All of the claims are owned by the Dredge Corporation, a Nevada Corporation.

Petitioner filed its complaint in the United States Court for the District of Nevada for review of agency action which invalidated petitioner's mining claims.

Summary judgment, by the District Court was granted in favor of the Dept. of Interior.

Petitioner appealed this judgment to the United States Court of Appeals for the Ninth Circuit. The judgment of the United States Court for the District

of Nevada was reversed and the cases remanded for further proceedings.

The United States Court for the District of Nevada on remand entered Judgment in favor of Petitioner whereupon an appeal was taken by the Dept. of Interior to the Court of Appeals for the Ninth Circuit.

The judgment questioned herein then followed in favor of the Dept. of Interior, June 26, 1968.

Petition for rehearing by Dredge was denied. Judgment was then stayed until Nov. 1, 1968 so this petition for writ of Certiorari could be filed.

The questions presented are

1. Was the so-called "marketability at a profit" test ever published in the Federal Register? Was it ever published in the Code of Federal Regulations or in pamphlets given to the public? If not is it invalid under the Administrative Procedure Act (5 U.S.C. 552(a)(1)(E).)?

2. Is the "marketability at a profit" test unconstitutional because it is vague, indefinite and uncertain?

3. Can the Common Varieties Act (30 U.S.C. 611) be applied against these mining claims, contrary to its express provisions in several paragraphs, excluding mining claims located prior to passage of the Act?

Statement.

I.

This action arose out of administrative proceedings by the Dept. of Interior declaring petitioners thirty six placer mining claims (located in 1952), to be null and void.